

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.138 of 1981

(Against the judgment and decree dated 09.04.1981 passed by the Additional Subordinate Judge 3rd, Begusarai in title suit No.5 of 1977/3 of 1981).

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Rajendra Chaudhary

.... Plaintiff-Appellant

Versus

The State of Bihar & Ors

.... Defendants-Respondents

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Appearance :

For the Appellant/s : Mr. Hare Krishna Kumar, Advocate

For the Respondent/s : Mr. Kundan Bahadur Singh, S.C.22

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. JUDGMENT

Date: 31-03-2015

1. The plaintiff has filed this First Appeal against the judgment and decree dated 09.04.1981 passed by the learned Additional Sub Judge 3rd, Begusarai in title suit No.5 of 1977/3 of 1981 whereby the court below dismissed the plaintiff's suit for declaration.

2. The plaintiff-appellant filed the aforesaid suit for declaration that the settlement of survey plot Nos.2225 and 2226 measuring 3 bighas 2 kathas and 18 dhurs in khata No.722 by ex-landlord, Maksudan Singh in favour of the plaintiff in the year 1342 Fasli is valid and irrevocable.

3. The plaintiff claimed the aforesaid relief alleging that the said plots are recorded in survey khatian as “Kund” and “Parti Kadim and Gairmajarua Khas Malik”. There were several landlords of tauji Nos.595 and 632. In private partition between the landlords, the plot Nos.2225 and 2226 fell in the share of Maksudan Singh. On account of flood, subsequently, the nature of the land has changed and now the lands are cultivable lands. In the year 1342 Fasli corresponding to 1935, the landlord settled these two plots in favour of Khakhru Chaoudhary, the grandfather of the plaintiff and since then the ancestor and then the plaintiff is coming in possession of the same. In the year 1948, the landlord filed rent suit against Khakhru Chaudhary for the rent of survey plot Nos.2225 and 2226 for the year 1945 to 1947 and the suit was decreed on satisfaction. After vesting, Zamindar filed return showing Khakhru Choudhary as tenant. In 1963, the plaintiff also mortgaged 1 bigha land of plot No.2225 for Rs.2,000/- and 5 kathas out of plot No.2226 for Rs.500/- and subsequently, he redeemed. Jamabandi was not opened, therefore, in the year 1966, the plaintiff filed a petition for opening jamabandi. The Halka Karamchari and Circle Inspector recommended for opening jamabandi but on 30.11.1966, the Mukhiya filed objection, therefore, the order of Anchal Adhikari was stayed by him and ultimately the Collector annulled the settlement in favour of the

plaintiff. Thereafter, the plaintiff filed writ application. The High Court observed that the plaintiff may approach Civil Court for his declaration of title, therefore, the suit has been filed.

4. The respondents-State filed contesting written statement. Besides taking various legal pleas, mainly the respondents contended that plot No.2225 was a “Kund” and still it is water reservoir and plot No.2226 was “Parti Kadim” and is still “Parti Kadim”, therefore, there is no question of cultivation by Maksudan Singh arises. Maksudan Singh was landlord having only one pie share, therefore, there is no question of his possession arises because the land measures 3 bighas 2 kathas 18 dhurs. The private partition claimed by the plaintiff was denied. There was no partition and the lands were never allotted to Maksudan Singh. The story of settlement is false. The filing of rent suit and filing of return are false story and collusive settlement was made. The alleged mortgage is also false and all these stories made for the purpose of creating evidence.

5. On the basis of the aforesaid pleadings of the parties, the learned court below framed the following issues:

- I. Is the suit as framed maintainable?
- II. Has the plaintiff got cause of action and right for this suit?
- III. Is the suit barred by law of limitation?
- IV. Is the plaintiff's case of settlement of the suit land by ex-landlord in the year 1935 true?

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- V. Is the plaintiff's case of possession over the suit land true?
- VI. Is the defendant's case that order of the Collector under Section 4H of the Bihar Land Reforms Act legal and valid?
- VII. Is the plaintiff entitled to get any relief as prayed for? If so, to what relief?

6. The learned trial court recorded the finding that plaintiff failed in proving his case of settlement of the suit land by Maksudan Singh in the name of his grandfather. The plaintiff has not prayed for setting aside the order of the Collector whereby the alleged settlement in favour of the plaintiff has been annulled by the Collector. Accordingly, the plaintiff's suit was dismissed.

7. The learned counsel, Mr. Hare Krishna Kumar appearing on behalf of the appellant submitted that there are overwhelming evidences oral as well as documentary adduced by the plaintiff in support of the fact that the ex-landlord settled the disputed land measuring 3 bighas 2 kathas 18 dhurs in favour of Khakhru Chaudhary, the grandfather of the plaintiff but the learned court below did not rely upon any of the evidences, as such, the impugned judgment and decree are liable to be set aside. Although, the lands were recorded as "Kund" and "Parti Kadim" but in course of time, the nature of the lands changed and became agricultural land. The landlord was in cultivating possession of the land and then he settled it in favour of grandfather of the plaintiff in the year 1935. When



some rent was due to be paid by the settlee, the landlord filed rent suit in the year 1948 which was decreed on satisfaction. Subsequently, at the time of vesting of zamindari, the landlord filed return showing Khakhru Chaudhary as the tenant and the return has been produced by the plaintiff. These are the indisputable documents which clearly prove the settlement in favour of the plaintiff and also possession but the learned court below on mere surmises and conjectures, discarded these evidences and dismissed the plaintiff's suit, therefore, the impugned judgment and decree are liable to be set aside.

8. On the other hand, the learned S.C.22 appearing on behalf of the State submitted that there is no error in the judgment and decree of the court below. The Collector after enquiry came to the conclusion that in fact, only to defeat the provision of Bihar Land Reforms Act, so called settlement was made by ex-landlord, Maksudan Singh in favour of Khakhru Chaudhary who was the son-in-law of the landlord. Maksudan Singh was father-in-law of Khakhru Chaudhary. The nature of the land is still "Kund" and "Parti Kadim" and it was never in possession of the landlord. Therefore, the Collector has rightly annulled the so called settlement in favour of the plaintiff. The return produced by the plaintiff cannot be relied upon because all these documents are created documents because of the relationship between the landlord and the settlee. Neither the landlord



was in possession nor the possession was delivered in favour of the settlee. The learned trial court rightly considered each and every evidence produced by the plaintiff and then recorded the finding, therefore, in first appellate jurisdiction, the judgment and decree passed by the court below cannot be interfered with lightly. Accordingly, the First Appeal is liable to be dismissed.

9. In view of the above contentions of the parties, the points arises for consideration in this First Appeal are as to “whether the plaintiff has been able to prove his case of settlement and is entitled for the decree as claimed” and “whether the impugned judgment and decree are sustainable in the eye of law?”

10. The plaintiff's claim is that the ex-landlord, Maksudan Singh had got two suit plots, 2225 and 2226 in private partition. The nature of the suit land which was “Kund” and “Parti Kadim” changed to agricultural land and was in possession of the ex-landlord. Thereafter, he settled the land to the grandfather of the plaintiff in the year 1935. The plaintiff pleaded in the plaint that by granting rent receipt, the settlement was made. The evidence was also adduced in support of this pleading.

11. The learned counsel, Mr. Kundan Bahadur Singh, S.C.22 submitted that although, here before the Court, the case of the plaintiff is that the settlement was made by the grant of rent receipt,

this case was pleaded for the first time before the Civil Court. According to S.C.22, in the rent suit, the landlord claimed that settlement was made by Hukumnama. Therefore, the claim of the plaintiff itself is contradictory.

12. In this case, the plaintiff has produced the plaint of rent suit which has been marked as Exhibit 19. It appears that the said rent suit was filed wherein the landlord had said that settlement was made by granting Hukumnana. From perusal of the order dated 20.04.1976, Exhibit 15/b passed by the Collector, it appears that no case of settlement by rent receipt was made by the plaintiff. In the application, for opening jamabandi, the plaintiff even did not mention the year of settlement. The document relating to rent suit of the year 1948 was also produced. It appears that the said suit was filed by Maksudan Singh against Khakhru Chaudhary and immediately after filing the said suit, the rent suit was withdrawn within one week. The suit was filed on 20.01.1948 and the suit was withdrawn on 27.01.1948 on filing the satisfaction petition of Maksudan Singh which is Exhibit 20. Therefore, the suit was filed by Maksudan Singh himself and then he filed satisfaction petition and he withdrew the same. There is no act of Court with respect to this. In other words, it can be said that these documents and the filing of rent suit No.12 of 1948 are self-serving documents. On the basis of these documents, it



cannot be said that in fact, any settlement was made. Admittedly, the landlord was the father-in-law of Khakhru Chaudhary. Therefore, it appears that these documents were created with a view to override the effect of Bihar Land Reforms Act. Exhibit E/1 is the order of Collector whereby the settlement in favour of Khakhru Chaudhary was annulled. From perusal of Exhibit E/1, it appears that the Collector found that to grab the public land, a false story of settlement of the year 1935 was claimed and for that purpose, the evidences were created. Only with a view that the provision of Bihar Land Reforms Act Section 4(h) will not apply. The settlement made after 01.01.1946 was to be annulled by the Collector and, therefore, the claim was made that settlement was made prior to 1946 i.e. in the year 1935. The landlord was the father-in-law, therefore, there was no question of filing any rent suit arises and moreover, the suit was filed on 20th January, 1948 whereas it was withdrawn by him just after six days which clearly indicate the intention of creation of documents. This is the finding of the Collector also.

13. The plaintiff has produced Exhibit 2, the affidavit sworn by Lakhan Choudhary who has been examined as P.W.4. Although, in his evidence, this witness has stated that there was partition between the landlords and in the partition, the suit lands fell in the share of Maksudan Singh but in the cross-examination, he



admitted that the so called partition took place prior to his birth. He is unable to say how much land was partitioned and he is even unable to say the year of partition. He also admitted that he had heard about the partition from his father. Therefore, he is a hearsay witness. In this line, P.W.13 has also deposed and he has also filed affidavit. P.W.8 is the plaintiff himself. He has admitted in his evidence that except the rent receipt, he has no other document in support of his settlement. According to the provision of law prevalent at that time, rent receipts were to be produced before the Collector by the landlords and the landlords were required to obtain seal of the Collector for issuing the same to the settlee i.e. their raiyats but the receipts produced by the plaintiff for the year 1935, 1937, 1949 and 1953 do not bear any such seal of the Collector. The court below found that the writing on the receipts do not appear to be of such old writing. The learned S.C. 22 appearing on behalf of the State submitted that in fact, these receipts are forged and fabricated receipts because landlord was the father-in-law of Khakhru Chaudhary. All these documents have been created. I find no reason to disbelieve the submission of the learned S.C.22. The court below also found these facts to be true.

14. The plaintiff has also produced the return, Exhibit 11. The learned counsel for the appellant submitted that this is the title document of the plaintiff and is proof of the fact that at the

time of vesting, the plaintiff was in khas possession on the basis of settlement made by ex-landlord. The ex-landlord filed the return showing Khakhru Chaudhary as raiyat of the disputed land.

15. From perusal of the return, Exhibit 11, it appears that no date has been mentioned below the signature of ex-landlord, Maksudan Singh. In the right side of Exhibit 11, word “verified” has been mentioned and it was signed but in that place also, there is no date below signature. One Gopal Prasad has signed. Who was Gopal Prasad and how he verified has not been explained. When this return was filed before which authority, there is nothing. There is no seal of any office. It appears that Exhibit 11 was produced by Amla of the Block. In fact, this document was available in the office of the Block then there should have been seal of the Block. How this Amla got this document searched in the office is not clear. It has been produced by him only before the Court. Except this, there is nothing in support of the case that from where he found the document because it did not bear the signature, seal of any authority nor the date is there. In such circumstances, it is very difficult to rely on this return alleged to have been filed by the ex-landlord considering the fact and the nature of the claim of settlement between father-in-law and son-in-law. Considering all these aspects of the matter, learned court below has found that this return, Exhibit 11 appears to be a forged document.



16. From perusal of Exhibit E/1, the annulment order of the Collector, it appears that Collector made spot inspection of the land. Mukhiya reported the matter saying that there is a water reservoir in the disputed plot and the cattle of the public at large, drink water and graze in the Parti land and it is not in possession of the plaintiff. The Collector also found the same to be correct and also considered the claim of settlement made by the plaintiff. It appears that another person claimed settlement from another co-sharer landlord who has 11 Anna share in the suit property. Therefore, taking advantage of the relationship different persons were claiming settlement of the suit land and were also claiming possession over the same. This claim of different persons regarding settlement and possession is not possible. It appears from the above discussion that in fact, on the basis of created documents, different persons including the plaintiff were creating evidence of title in their favour. The Collector found that the nature of the suit land has not changed and still there is “Kund” and the rest portions of the land are “Parti Kadim”. In such circumstances, there is no question of settlement arises.

17. It appears that the defendants have also produced many witnesses who are D.W.8 to 12, 14 and 16. All the witnesses have stated that the plaintiff is not in possession nor his grandfather

was in possession of the suit land. All these witnesses are of the same village. Therefore, there is no satisfactory evidence produced by the plaintiff in support of his exclusive cultivable possession over the suit land.

18. It appears that the Collector initiated a proceeding under Section 4(h) of the Bihar Land Reforms Act. From perusal of Exhibit 15(d), the Collector issued notice to the plaintiff and other claimants to appear before him and file documents in support of their claims. Necessary enquiries were made and the Deputy Collector, A.P.Sharma submitted report and thereafter considering the facts and circumstances of the case, the Collector by order dated 10.04.1976 annulled the settlement claimed by the plaintiff. It may be mentioned here that it is admitted fact that plaintiff has never challenged this order passed by the Collector. He filed the writ application before the High Court and the High Court dismissed the writ application with observation that the plaintiff may approach the Civil Court for declaration of his title.

19. In view of my above discussion, I find that the plaintiff has failed to prove his case of settlement and, therefore, is not entitled for declaration sought for by him. The plaintiff has also failed to prove his exclusive possession over the suit land. The finding of the trial court on this question is, therefore, hereby confirmed.

20. In the result, I find no merit in this First Appeal and thus, this First Appeal is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

(Mungeshwar Sahoo, J)

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